

211 CMR 142.00: INSURANCE SALES BY BANKS AND CREDIT UNIONS142.01: Scope and Purpose

211 CMR 142.00, et seq., is promulgated pursuant to St. 1998, c. 129, An Act Providing Consumer Protection Relative to the Sale of Insurance by Banks and St. 2002, c. 454, An Act Relative to Credit Unions. The purpose of 211 CMR 142.00, et seq., is to regulate the insurance sales activities of banks and lenders in Massachusetts and to ensure that such business is conducted in compliance with the consumer protection laws of the Commonwealth.

142.02: Applicability

211 CMR 142.00, et seq., applies to any bank which engages in insurance sales activities in Massachusetts. 211 CMR 142.00, et seq., however, shall not apply to any license issued, or renewed, under the provisions of M.G.L. c. 178A, to a bank or its officers or employees to act as agents for the Savings Bank Life Insurance Company of Massachusetts. Furthermore, 211 CMR 142.00, et seq., shall not apply to the authority granted by M.G.L. c. 167F, § 2, paragraphs 16 and 17; and M.G.L. c. 255, § 12G.

142.03: Definitions

The following terms shall have the corresponding meanings unless the context requires otherwise:

Affiliate: An affiliate of a bank as defined by M.G.L. c. 167A, § 1, or a credit union service organization as established pursuant to 12 U.S.C. section 1786a(e)(1) or by M.G.L. c. 171, § 6A and by regulations promulgated by the Commissioner of Banks at 209 CMR.

Application: An application by a bank to transact insurance sales activities submitted to the Division under M.G.L. c. 175, § 209.

Bank: a state bank, lender or federal bank which is subject to M.G.L. c. 175, § 209.

Bank premises: A main office or branch office(s) of a bank established under state or federal law or any other bank office, including a loan production office, in which consumer deposit or credit transactions may be effected. The term also shall include the offices of lenders. Electronic branches established under M.G.L. c. 167B are not defined as bank premises and are not authorized locations for insurance

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sales activities.

Commissioner: The Commissioner of Insurance, including The Division of Insurance of the Department of Banking and Insurance established under M.G.L. c. 26, § 1.

Commissioner of Banks: The Commissioner of Banks, including The Division of Banks of the Department of Banking and Insurance established under M.G.L. c. 26, § 1.

The Division: The Division of Insurance of the Department of Banking and Insurance established under M.G.L. c. 26, § 1.

The Division of Banks: The Division of Banks of the Department of Banking and Insurance established under M.G.L. c. 26, § 1.

Federal bank: A bank or credit union chartered by the United States subject to supervision and examination by the Office of the Comptroller of the Currency, or the Office of Thrift Supervision, or the National Credit Union Administration, or any such successor federal bank regulatory agency. The term federal bank shall also include an affiliate, subsidiary corporation or third party vendor engaged in insurance sales activities on behalf of, or under contract with, a federal bank.

Federal bank regulatory agency: The Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration or any other applicable federal bank regulatory agency.

Federal conditions governing the sale of insurance: The conditions established by the Comptroller of the Currency, the National Credit Union Administration and other applicable federal regulatory agencies, by guideline or subsequent regulation, governing the sale of insurance products. The term shall also include conditions prescribed by the federal bank regulatory agencies' Interagency Statement on Retail Sales of Mutual Funds and other Non-deposit Investment Products, to the extent applicable.

Insurance sales activities: marketing, negotiating, soliciting or selling insurance products in Massachusetts, as those terms are defined in M.G.L. c. 175, § 162H..

Interagency Agreement: The Interagency Agreement Relative to Bank Insurance Sales Consumer Complaint Resolution Procedures entered into by the Commissioner and the Commissioner of Banks pursuant to M.G.L. c. 175, § 210; M.G.L. c. 167F, § 2A(b)(9); St. 1998, c. 129, § 11; M.G.L. c. 171, §

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75B(b)(9); St. 2002, c. 454, § 6.

Lender: A small loan company licensed pursuant to M.G.L. c. 140, § 96; a mortgage lender and a mortgage broker licensed pursuant to M.G.L. c. 255E; and a mortgagee subject to the provisions of M.G.L. c. 183, § 68. The term lender shall also include an affiliate, subsidiary corporation or third party vendor engaged in insurance sales activities on behalf of, or under contract with, a lender.

Office of Consumer Affairs: The Office of Consumer Affairs and Business Regulation established under M.G.L. c. 24A, § 1.

St. 1998, c. 129: Chapter 129 of the Acts of 1998.

St. 2002, c. 454: Chapter 454 of the Acts of 2002.

State bank: A state-chartered savings bank, co-operative bank, credit union, or trust company or any other bank charter form hereinafter established under the General Laws. A bank shall also include a Massachusetts branch of an out-of-state bank, as defined by M.G.L. c. 167, § 1, provided, however, that the laws of such bank's chartering State authorize a bank to engage in insurance sales activities. The term bank shall also include an affiliate, subsidiary corporation or third party vendor engaged in insurance sales activities on behalf of, or under contract with, a bank.

142.04: Licensing

(1) No bank may engage in insurance sales activities in Massachusetts unless licensed by the Division pursuant to M.G.L. c. 175, § 209, and 211 CMR 142.00, et. seq. A bank may apply to be licensed directly or indirectly through an affiliate or a subsidiary corporation established for this purpose. If a bank applies to be licensed directly, or indirectly through an affiliate, it shall only engage in insurance sales activities through individual licensed producers employed by the bank or such affiliate. If a bank applies to have a subsidiary corporation licensed as an insurance producer, then such subsidiary corporation shall be organized in accordance with M.G.L. c. 175, § 174. Licensed individual insurance producers employed by such subsidiary corporation may engage in insurance sales activities on bank premises in accordance with St. 1998, c. 129 and St. 2002, c. 454 and regulations promulgated thereunder. Furthermore, prior to entering into a third-party agreement relative to the sale of insurance that includes the sharing of commissions with an insurance producer, any such bank must first be licensed by the Division pursuant to M.G.L. c. 175, § 209.

(2) State banks or lenders shall submit with the application, a copy of the plan of operation for insurance sales activities approved by the Division of Banks pursuant to 209 CMR 49.00.

(3) Federal banks shall submit with the application, a statement that the bank has complied with all federal conditions governing the sale of insurance. In addition to the statement, each federal bank applying for a license under M.G.L. c. 175, § 209, shall submit with its application a plan of operation for insurance sales activities which shall include the following:

(a) A detailed description of the bank's consumer complaint resolution procedures, which shall include, but not be limited to: the names, addresses and telephone numbers of designated personnel responsible for its enforcement; a description of its procedures for forwarding copies of all consumer insurance sales complaints to the Office of Consumer Affairs; and a description of its procedures for the investigation and resolution of such complaints;

(b) Information demonstrating that the bank has established effective internal control procedures and safeguards to ensure compliance with the consumer protection terms and conditions prescribed by 211 CMR 142.05, 211 CMR 142.06 and 211 CMR 142.09;

(c) Detailed information demonstrating that the applicant has established effective internal control procedures and safeguards against the unauthorized release, dissemination, or sharing of confidential customer information, including medical record information, protected by M.G.L. c. 175I, within the applicant's organization, including its affiliates, subsidiary corporations and third party vendors, as well as to third parties; and

(d) A representation and undertaking that insurance sales activities will be conducted in accordance with 211 CMR 142.00, et seq., and all other applicable state and federal law.

(4) A fee shall accompany each application for a license issued under M.G.L. c. 175, § 209. The fee for a bank to be licensed directly, or through an affiliate or a subsidiary corporation, shall be the same fee required by the corresponding application for a corporate producer license issued under M.G.L. c. 175, § 162L, and pursuant to M.G.L. c. 175, § 14.

(5) For banks located wholly outside of Massachusetts, nothing in 211 CMR 142.00, et. seq., shall be construed to prohibit a bank chartered in another state of the United States, a federal bank, or any employees of such banks, from applying for non-resident insurance producer licenses if the bank is authorized to engage in insurance sales activities under applicable law; nor shall such banks, if licensed, be prohibited from owning an interest in an insurance agency or brokerage located in Massachusetts if the bank is authorized to engage in insurance sales activities under applicable law.

(6) Any bank, or subsidiary corporation of a bank, which was issued a license to act as an insurance agent or broker prior to the enactment of St. 1998, c. 129, may continue to hold such license in accordance with applicable laws, or such bank, or subsidiary corporation, may apply for a new license pursuant to M.G.L. c. 175, § 209, and 211 CMR 142.00, et. seq. Any application to renew previously

issued licenses shall be submitted pursuant to M.G.L. c. 175, § 209, and 211 CMR 142.00, et. seq.

142.05: Designated Areas and Licensed Personnel

(1) A bank shall be permitted to conduct insurance sales activities at the main office or at any branch thereof.

(2) A bank may solicit and sell insurance products on bank premises, provided such activity is conducted in a distinctly designated area which is separate and apart from physical areas in which transactions involving insured deposits or extensions of credit are conducted.

(a) A state bank or lender may obtain a waiver for the requirement of physical separation of transactions involving insured deposits or extensions of credit and insurance sales activities from the Commissioner of Banks pursuant to 209 CMR 49.06(4). If a state bank or lender obtains such a waiver from the Division of Banks, it shall promptly forward a copy of the order approving the waiver to the Division.

(b) With respect to a federal bank, the Commissioner, in his or her discretion, may waive the requirement under 211 CMR 142.05(2) for the physical separation of transactions involving insured deposits or extensions of credit and insurance sales activities upon a demonstration by a federal bank that space considerations, such as the size or design of said bank premises, preclude such separation. The burden is upon the applicant bank to demonstrate that size, design, landmark status, National Register of Historic Places designation, site impediments, local zoning requirements, building codes, fire codes or other relevant considerations warrant the granting of a waiver.

1. The following conditions shall apply to any waiver granted under 211 CMR 142.05:

a. Common areas may be permitted for banking and credit transaction and insurance purposes if physical constraints warranting such condition are satisfactorily demonstrated by a bank's waiver application.

b. In any instance where such waiver is granted, a bank employee, licensed as an insurance producer, shall not, in any manner involving the application by a customer for an extension of credit by said bank, act as the representative of the bank both with respect to said application and with respect to the solicitation and sale of insurance products to said customer, whether or not such insurance is required for the extension of credit.

c. It shall be the responsibility of a bank to institute procedures to eliminate customer

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misunderstanding or confusion as to the distinction between such insurance products and other bank functions, and to prevent any misrepresentation thereof if a waiver is granted.

d. The Commissioner, in his or her discretion, may impose such other conditions as may be deemed necessary to effectuate the purposes of 211 CMR 142.05(2).

e. The Commissioner, in his or her discretion, may subject a waiver application under 211 CMR 142.05(2)(b) to such notice and hearing as may be required.

2. Notwithstanding 211 CMR 142.05(2)(b), any federal bank premises constructed, purchased, leased or acquired by a bank on or after September 1, 1998, or on or after June 20, 2003 for a bank subject to M.G.L. c. 171, §75B, for the conduct of its authorized business, including the solicitation and sale of insurance, shall not be eligible for the waiver provided for herein, unless said acquisition results from a merger, consolidation or purchase of assets pursuant to federal law.

3. Applications for waivers shall be available for public inspection upon request unless the information is exempt from disclosure under M.G.L. c. 66, § 10, and M.G.L. c. 4, § 7, cl. 26. Decisions approving or denying such applications shall be in writing and shall be available for public inspection upon request.

(3) Insurance sales activities conducted at the main office or at any branch location shall be conducted only by insurance producers licensed pursuant to M.G.L. c. 175, § 162I. Non-licensed bank personnel may refer consumers to a licensed insurance producer of the bank only upon an inquiry initiated by the consumer. Non-licensed bank personnel shall not be additionally compensated for such referrals.

142.06: Insurance Sales Activities and the Extension of Credit

(1) A bank is prohibited from tying the availability and extension of credit by a bank to the purchase of insurance products from said bank in violation of M.G.L. c. 176D, § 4, or 12 USC § § 1971-1978 and its implementing regulations promulgated by the Board of Governors of the Federal Reserve System.

(2) No solicitation for the sale of insurance in conjunction with any application for the extension of credit shall be permitted until said application has been approved, such approval and the disclosures required by 211 CMR 142.06 have been provided to said applicant in writing, and the receipt of both said approval and disclosures has been acknowledged in writing by said applicant. The date, time and method of the communication of said approval and disclosures to the applicant, together with the applicant's acknowledgment of the receipt thereof, shall be made a permanent part of the bank record of such extension of credit.

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(3) In the instance of an application to a bank for an extension of credit to be secured by a mortgage on real estate and in which it is necessary for the applicant to obtain a policy insuring said premises against loss and designating such bank as loss payee:

(a) said bank shall make the initial disclosure of the necessity of such insurance in its letter of commitment to the applicant approving the requested extension of credit;

(b) such bank shall not, in any manner, solicit the applicant to purchase the required insurance from the bank until said commitment has been accepted by the applicant; and

(c) such bank shall not reject any such policy, so long as it satisfies the required insurance, because the policy was issued by a company other than that for which the bank acts as agent in the sale of insurance products.

(4) 211 CMR 142.06(2) and 211 CMR 142.06(3) shall not apply in situations where a bank contacts a customer in the course of direct or mass marketing of insurance products to a group of persons in a manner that bears no relation to any such person's loan application or credit decision.

(5) Rebates shall be regulated pursuant to M.G.L. c. 175, § § 182 through 184.

(6) All disclosures required by 211 CMR 142.06 shall be provided by a bank, through its licensed insurance producers, to a potential insurance customer in writing and shall state the following:

(a) the insurance products which are available are not deposits of the bank, are not protected by the federal deposit insurance corporation or any other type of deposit insurance, are not an obligation of or guaranteed by the bank, and may be subject to risk;

(b) any insurance required as a condition of the extension of credit by the bank need not be purchased from the bank but may, without affecting the approval of the application for an extension of credit, be purchased from an agent or insurance company of the customer's choice; and

(c) the customer may file any complaints with the Office of Consumer Affairs, as provided in 211 CMR 142.08.

(7) The disclosure required by 211 CMR 142.06(6)(a) shall not apply to a lender that does not accept deposits.

(8) The disclosures required by 211 CMR 142.06 shall be provided in writing and receipt thereof shall be acknowledged in writing by the customer. A copy of all disclosure forms shall be kept in the records of the bank.

142.07: Anti-Discrimination

No bank engaged in insurance sales activities shall unlawfully discriminate against an insurance applicant or allow an affiliate, a subsidiary corporation established for the purpose or a third party acting on its behalf to unlawfully discriminate against an applicant for any insurance products offered by it based upon his or her membership in any class protected by M.G.L. c. 151B, § 4(3A)-(3B), including but not limited to, race, color, national origin or residence. No bank offering insurance products at its bank premises, shall refuse to offer the same at every such branch of the bank.

142.08: Customer information and record keeping

(1) A bank, licensed as an insurance producer under M.G.L. c. 175, § 209, shall not permit the unauthorized release, dissemination, or sharing of confidential information, including medical record information, protected by M.G.L. c. 175I, within the bank's organization, including its affiliates, subsidiary corporations and third party vendors, as well as to third parties.

(2) A bank shall at all times remain in compliance with M.G.L. c. 175I.

142.09: Consumer Complaint Processing

(1) A bank engaged in insurance sales activities, as an insurance producer, shall forthwith forward copies of all Massachusetts customer complaints relative to such activities to the Office of Consumer Affairs. Said Office shall cause a record of all such complaints received to be maintained and shall, depending upon the nature of the complaint, refer any such complaint for resolution to the Division or the Division of Banks.

(2) The processing and resolution of consumer complaints under 211 CMR 142.09 shall be governed by the Interagency Agreement, and any amendments thereto.

(3) A bank shall take reasonable steps to investigate all consumer complaints and shall make a good faith effort to resolve such customer complaints in a timely manner.

(4) Nothing in 211 CMR 142.09(1) shall prohibit a consumer from filing a separate individual complaint

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directly with the Office of Consumer Affairs, the Division or the Division of Banks. Such complaints shall be processed pursuant to the Interagency Agreement.

142.10: Fines and License Suspension or Revocation

Any violation of 211 CMR 142.00, et seq., shall be subject to all applicable fines and penalties, including the suspension and revocation of licenses, pursuant to the provisions of M.G.L. c. 175, and c. 176D. Any violation of 211 CMR 142.00, et seq., shall be deemed to be an unfair method of competition and an unfair or deceptive act or practice pursuant to M.G.L. c. 176D, § 11.

142.11: Severability

If any provision of 211 CMR 142.00, et seq., or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of 211 CMR 142.00, et seq., and the application of such provision to other persons or circumstances shall not be affected thereby.